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OFFICE OF PETITIONS

In re Application of
Bosik, et al.
Application No. 10/026,330
Filed: December 18, 2001
Attorney Docket No. 2000-0674

ON PETITION

This is a decision on the petition under 37 CFR 1.137(f)), filed May 19, 2003, which is being treated as a petition to revive under 37 CFR 1.137(b).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of a PCT international application filed on December 13, 2002. However, the US Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the PCT application.

Applicant filed a "Rescission of Request to not Publish Application Pursuant to 35 U.S.C. 122(b) and 37 C.F.R. 1.213" on December 18, 2002 (Certificate of Mailing under 37 CFR 1.8 dated December 12, 2002, however, the rescission request was not eligible for the benefits of 37 CFR 1.8.¹). The rescission request did not provide notice of the PCT filing. Accordingly, as the rescission was not made until after the filing of the PCT application, applicant was required by 35 U.S.C. 122(b)(2)(B)(iii) to provide notice of the PCT filing not later than forty-five days after the date the PCT application was filed to avoid abandonment of the application.²

¹ See "Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. 122(b)(2)(B)(ii)-(iv)", available at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/35usc122b2binterpret.htm>.

² See id.

In view of the above, this application became abandoned pursuant to 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(f) must be accompanied by:

- (1) the reply, which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 USC 122(b)(2)(B)(I) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth a projected publication date of September 25, 2003 accompanies this decision on petition.

The application is being forwarded to Technology Center 2600 for examination in due course.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0272.



Cliff Congo
Petitions Attorney
Office of Petitions

Enc: Notice Regarding Rescission of Nonpublication Request
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